IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1526 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA
THE HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant(s)
Versus
KALAVATIBEN LILADHAR, - Opponent(s)

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Appearance :
Ms.Hansa Punani,learned APP for Appellant(s) : 1,
None for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA
and
THE HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 10/03/2006

ORAL JUDGMENT

(Per : THE HON'BLE SMT. JUSTICE ABHILASHA KUMARI)

1. This appeal under Section 378 of the Criminal Procedure Code has been filed by the appellant -State of Gujarat, being aggrieved by the judgment and order dated 5.9.2003 of the learned Additional Sessions Judge, 6th Fast Track Court, Rajkot in Sessions Case No.193 of 1994, whereby the respondent – original accused (for short 'accused') has been acquitted of the offences punishable under Sections 498(A) and 306 of the Indian Penal Code (for short 'IPC').

2. Briefly stated the case of the prosecution,as culled out from the material on record, is that the deceased Tulshaben alias Tulsiben was married to one Premjibhai, who is the brother of the accused. Two months prior to the incident the deceased and her husband had come to reside near the house of the accused on Street No.5, Santkabir Road, Gokulnagar, Rajkot. It is the case of the prosecution that the accused used to frequently quarrel with the deceased on the issue of sharing water from the water tap. The

accused was physically and mentally harassing the deceased.

3. On the day of the incident i.e. 28.2.88 at about 12 noon the deceased committed suicide by pouring kerosene and setting herself on fire, allegedly due to the physical and mental cruelty inflicted upon her by the accused, which she could not bear any longer.

4. On these facts, the complaint was filed by the father of the deceased, namely, Jethalal Damjibhai. On the basis of this complaint, the FIR was registered against the accused in the 'B' Division Police Station, Rajkot vide C.R.No.70/88. Pursuant to the registration of the complaint, the investigation was put into motion. During the course of investigation, inquest was held on the dead body of the deceased, which was sent for autopsy, panchanama of the scene of offence was prepared, statements of witnesses were recorded. At the end of the investigation, as sufficient incriminating evidence was found against the accused, she came to be charge-sheeted before the learned Judicial Magistrate,First

Class, Rajkot. As the offence under Section 306 of the IPC is exclusively triable by the court of Sessions, the learned Magistrate committed the case to the Court of Sessions, Rajkot, which came to be registered as Sessions Case No.193/94. The learned Addl.Sessions Judge, to whom the case was made over for trial, framed necessary charges against the accused, which were read over and explained to her. Accused pleaded not guilty to the charges and claimed to be tried and was put to trial.

5. In support of the case of the prosecution as many as seven witnesses were examined and nine documents were produced, details of which have been narrated by the learned trial Judge in paras 3 and 4 of the impugned judgment.

6. After the recording of the evidence of the prosecution witnesses was over, the learned trial Judge explained to the accused the circumstances appearing against her in the evidence of the prosecution witnesses and recorded her further statement under Section 313 of the Cr.P.C. In the

further statement she denied the case of the prosecution in toto.

7. At the end of the trial, on appreciation, evaluation, analysis and scrutiny of the evidence on record, the learned trial Judge came to the conclusion that the prosecution has been able to establish that the deceased Tulshaben died a suicidal death. However, the prosecution failed to prove beyond reasonable doubt, that the accused had instigated and abetted the deceased to commit suicide and that the deceased was subjected to physical and mental cruelty at the hands of the accused prior to the incident,which led her to commit suicide. On this finding, the learned trial Judge acquitted the accused of the offences with which she was charged, which has given rise to the present appeal.

8. We have considered the submissions and also undertaken a complete and comprehensive appreciation of all vital features of the case and the entire evidence on record, which is read and re-read by Ms.Hansa Punani, learned APP, with reference to broad

and reasonable probabilities of the case.

9. There is no dispute regarding the fact that Tulshaben died a suicidal death. In this connection the prosecution has examined P.W.2 Dr.Ravikant Damor(Exh.10), who has performed the autopsy on the body of the deceased and prepared the post mortem note, which is at Exh.13. On a conjoint reading of his oral testimony as well as Exh.13, there is no manner of doubt that the deceased died due to shock due to extensive burns. Therefore, on the basis of this evidence it has to be held that the death of the deceased was definitely a suicidal one, due to burns.

10. Having held that the deceased Tulshaben died a suicidal death, the only question that falls for the determination of this court is as to whether the deceased was subjected to mental and physical cruelty at the hands of the accused, to such a degree that it led her to take the extreme step of committing suicide.

11. To prove the case of the prosecution, reliance

has been placed on the testimony of P.W.1 Jethalal Damjibhai, father of the deceased, who has been examined at Exh.7. He has testified that he is residing with his family at Rajkot and his wife has expired about six years prior to the incident. He has stated that his younger daughter Tulshaben (deceased) was married with Premji ten months prior to the incident. Tulshaben was residing at Visavadar with her husband, mother and father-in-law. Thereafter, about two months prior to the incident she, alongwith her husband Premji, came to reside at Street No.5, Santkabir Road, Gokulnagar, Rajkot,near the house of her sister-in-law i.e. accused Kalavatiben. In his statement, the complainant has categorically denied that the accused was inflicting any cruelty on the deceased. He has stated that on 28.2.88 some relatives had telephoned and told him that his daughter had sustained burn injuries and had been removed to the Government Hospital. Then he had gone to the Government Hospital at Rajkot and reached there at 7.0 P.M. At the relevant point of time he has filed the FIR against the accused, which bears his signature. This FIR is produced at Exh.8. The

complainant has not supported the case of the prosecution and has been declared hostile. In fact, he has given a total go-bye to his complaint and in his cross-examination, he has even denied the suggestion that he has stated in his FIR that the accused was quarreling with the deceased every day and that accused was instigating the husband of the deceased or subjecting her to cruelty. In fact, the complainant had denied that he has stated in the FIR that due to cruelty caused by the accused, the deceased had sprinkled kerosene and set herself ablaze. The complainant was subjected to lengthy cross-examination during which he stated that accused had got married prior to the marriage of the deceased and was residing at her in-laws house. He has also stated that his daughter (the deceased) was of a very sensitive and short-tempered nature.

12. On re-appraisal of the evidence of this witness, according to us, nothing incriminating is found against the accused which would connect her with the alleged crime. No incident regarding physical or mental cruelty emerges from the testimony

of this witness, which could have induced the deceased to commit suicide.

13. Having noticed the oral testimony of P.W.1, now we shall advert to the evidence of P.W.4 Haribhai Mohanbhai,Executive Magistrate, whose oral testimony is recorded at Exh.16, who has recorded dying declaration of the deceased. This witness has stated that on 28.2.88 at about 3.20 P.M. he received a Police Yadi vide Exh.17, to record the dying declaration of deceased Tulshaben. He had gone to the Hospital and recorded the dying declaration. Before he started to record the dying declaration of the deceased, the Doctor endorsed that at that time she was in a fit condition to give her dying declaration. When he recorded the dying declaration of the deceased she was in a conscious condition. The dying declaration, which is produced at Exh.18, also bears the right hand thumb impression of deceased Tulshaben and bears his signature.

14. In the dying declaration Exh.18, the deceased has stated before the Executive Magistrate that

originally she belongs to Visavadar. Since her father-in-law and brother-in-laws were everyday quarreling with her at Visavadar, she came to Rajkot two months ago. Here, her sister-in-law Kalavatiben (accused) was everyday quarreling with her and instigating her brother (husband of deceased). Today from the morning her sister-in law (accused) was quarreling with her and her husband was not at fault. The sister of Kalavatiben (accused) is her 'Bhabhi'. Kalavatiben was telling her from the morning to go to her parental house and to send Babli(her Bhabhi). Her parents are residing at Jamnagar. She does not have a mother, and was residing in rented premises of Babubhai.She was fed up with the harassment of her sister-in-law(accused) and hence she has sprinkled kerosene and set herself on fire.

15. On a conjoint reading of the testimony of P.W.4 and the dying declaration Exh.18 it is seen that the deceased came to reside at Rajkot near the house of the accused only two months before the incident. The accused is not residing with the deceased and is residing separately in her own house. No offence has

been registered against the husband of the deceased and there is no evidence to the effect that the husband of the deceased has succumbed to the alleged instigation by the accused and committed any act of cruelty on the deceased. Moreover, it seems that the quarrel between the deceased and the accused was nothing more than the usual wear and tear in the course of domestic interaction. There is not an iota of evidence, leave alone any reliable or trustworthy evidence, to the effect that there were any acts of cruelty, either physical or mental, committed by the accused upon the deceased, which could have led her or instigated her to commit suicide. Neither is there any evidence on record that there was any demand for dowry. The alleged harassment which has been referred to by the deceased in the dying declaration does not appear to be of an incessant, persistent and unbearable nature, which could have led her to take the extreme step.

16. It is a settled proposition of law that for bringing home the charge under sections and 306 of IPC, there must be some evidence adduced on

record showing that soon before the incident there was some harassment and torture to the deceased at the hands of the accused. Section 107 of IPC is with regard to the abetment and as per the provisions of this Section, there must be some evidence that soon before the incident there must be some incident due to which she was prompted, instigated or abetted to commit suicide. In the instant case, no such evidence is forthcoming. Therefore, there is no evidence adduced on record showing that soon before the incident any other incident took place due to which she was instigated or abetted to commit suicide.

17. In the case of Sanju alias Sanjay Singh Sengar v. State of Madhya Pradesh, 2002 AIR SCW 2035 (SC) the Supreme Court has held that accused telling deceased 'to go and die' that itself would not constitute ingredient of 'instigation'. Presence of mens rea is necessary concomitant of

instigation. The fact that deceased committed suicide after two days of quarrel during which the said words were uttered by accused would show that suicide was not direct result of quarrel and, therefore, the Supreme Court has held that that the charge-sheet framed under Section 306 of IPC against the accused was liable to be quashed as ingredients of abetment were totally absent.

18. In the case of Ramesh Kumar v. State of Chhattisgarh, (2001) 9 SCC 618 (SC) the Supreme Court has held that there must be a reasonable certainty to incite the consequence. Merely because accused is found guilty under Section 498-A he should not necessarily be held to be guilty under section 306 of IPC on the basis of the same evidence.

19. Applying the principles laid down by the Supreme Court in the above referred to two judgments to the facts of the present case, there

is no direct evidence as to what type of physical and mental cruelty was meted out by the accused to deceased Tulshaben as well as what abetment or instigation was given by the accused to deceased Tulshaben to commit suicide.

20. In view of the aforesaid state of affairs, the prosecution has failed to prove the charge levelled against the accused with regard to the physical and mental cruelty meted out to the deceased Tulshaben by the accused and hence instigation and abetment made by the accused to deceased Tulshaben to commit suicide is not proved.

21. In view of the unsatisfactory evidence led by the prosecution, we are of the considered opinion that no illegality is committed by the learned Additional Sessions Judge in acquitting the accused of the offences with which she was charged and we are in complete agreement with

the findings, ultimate conclusion and resultant order of acquittal recorded by the learned trial Judge, as, in our view, no other conclusion is possible except the one reached by the learned trial Judge.

22. It is a cardinal principle of criminal jurisprudence that in an acquittal appeal if other view is possible then also appellate Court cannot substitute its own view by reversing the acquittal into conviction, unless the findings of the trial Court are perverse, contrary to the material on record, palpably wrong, manifestly erroneous or demonstrably unsustainable. (See Ramesh Babulal Doshi V. State of Gujarat (1996) 9 SCC 225). In the instant case, the learned APP has not been able to point out to us as to how the findings recorded by the learned trial Court are perverse, contrary to material on record, palpably wrong, manifestly erroneous

or demonstrably unsustainable.

23. In the case of RAM KUMAR V. STATE OF HARYANA, reported in AIR 1995 SC 280, Supreme Court has held as under:

> "The powers of the High Court in an appeal from order of acquittal to reassess the evidence and reach its own conclusions under Sections 378 and 379, Cr.P.C. are as extensive as in any appeal against the order of conviction. But as a rule of prudence, it is desirable that the High Court should give proper weight and consideration to the view of the Trial Court with regard to the credibility of the witness, the presumption of innocence in favour of the accused, the right of the accused to the benefit of any doubt and the slowness of appellate Court in justifying a finding of fact arrived at by a Judge who had the advantage of seeing the witness. It is settled law that if the main grounds on which the lower Court has based its order acquitting the accused are reasonable and plausible, and the same cannot entirely and effectively be dislodged or demolished, the High Court should not disturb the order of acquittal."

24. It may be noted that this is an acquittal appeal in which Court would be slow to interfere

with the order of acquittal. Infirmities in the prosecution case go to the root of the matter and strike a vital blow on the prosecution case. In such a case, it would not be safe to set aside the order of acquittal, more particularly, when the evidence has not inspired confidence of the learned trial Judge. As this Court is in general agreement with the view expressed by the learned trial Judge, it is not necessary for this Court either to reiterate the evidence of the prosecution witnesses or to restate reasons given by the learned trial Judge for acquittal and in our view, expression of general agreement with the view taken by the learned trial Judge would be sufficient in the facts of the present case for not interfering with the judgment of the learned trial Judge and this is so, in view of the decisions rendered by the Hon'ble Supreme Court in the case of GIRJA NANDINI DEVI AND OTHERS V. BIJENDRA NARAIN

CHAUDHARI, AIR 1967 SC 1124 and STATE OF KARNATAKA V. HEMA REDDY AND ANOTHER, AIR 1981 SC 1417.

25. On overall appreciation of evidence, this Court is satisfied that there is no infirmity in the reasons assigned by the learned trial Judge for acquitting the accused. Suffice it to say that the learned trial Judge has given cogent and convincing reasons for acquitting the accused and the learned A.P.P. has failed to dislodge the reasons given by the learned trial Judge and convince this Court to take a view contrary to the one taken by the learned Judge.

26. Seen in the above context, we do not find any valid reason or justifiable ground to interfere with the impugned judgment and order acquitting the accused of the offences with which she was charged. Hence, leave to

appeal deserves to be refused by dismissing the appeal in limine.

27. For the foregoing reasons, leave to appeal is refused. The appeal is dismissed at the threshold.

(A.M. Kapadia, J.)

(Smt.Abhilasha Kumari,J)

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